

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CARDIZEM CD ANTITRUST
LITIGATION,

Master File No. 99-md-1278
MDL No. 1278

THIS DOCUMENT RELATES TO:
ALL ACTIONS,

Honorable Nancy G. Edmunds

FILED

JAN 09 2002

CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

ORDER NO. 32

**AFFIRMING MAGISTRATE JUDGE'S SEPTEMBER 26, 2001 ORDER GRANTING
PLAINTIFFS' MOTION TO COMPEL EVIDENCE AND TESTIMONY PURSUANT TO
THE CRIME/FRAUD EXCEPTION**

On September 26, 2001, this Court entered Magistrate Judge Goldman's opinion and order granting Plaintiffs' motion to compel evidence and testimony pursuant to the crime/fraud exception. Plaintiffs sought documents listed in Defendants' privilege logs that directly relate to the creation, formation and furtherance of the HMRI/Andrx Agreement, previously found by this Court to constitute a *per se* violation of section 1 of the Sherman Act, 15 U.S.C. § 1. See *In Re Cardizem CD Antitrust Litig.*, 105 F. Supp. 2d 682, 699 (E.D. Mich. 2000). Plaintiffs also sought testimony from James M. Spears on the same subject matter.

The Magistrate Judge found that "the testimony relating to the formation of the HMRI/Andrx Agreement falls within the crime-fraud exception to the attorney-client privilege and that Plaintiffs are therefore entitled to that testimony." Mem. Opin. & Order at 11. The Magistrate Judge further found that "the documents contained in the [Defendants'] privilege

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logs may very likely be subject to the crime-fraud exception and therefore are subject to *in camera* review by the court." *Id.*

This matter is presently before the Court on Defendants' objections to and appeal of the Magistrate's Order filed September 26, 2001. After consideration of objections, the Court may modify an order by the Magistrate Judge only where the party appealing or objecting to the Magistrate Judge's order shows that "the magistrate's order is clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

Having carefully considered Defendants' objections to Magistrate Judge Goldman's Memorandum Opinion and Order, filed on September 26, 2001, granting Plaintiffs' motion to compel the production of testimony and documents pursuant to the crime/fraud exception, and finding Magistrate Judge Goldman's Order not to be clearly erroneous or contrary to law, it is hereby

ORDERED that Magistrate Judge Goldman's September 26, 2001 Order Granting Plaintiffs' motion to compel evidence and testimony pursuant to the crime/fraud exception is **AFFIRMED**. Accordingly, the documents contained in Defendants' privilege logs shall be submitted to Magistrate Judge Donald A. Scheer for inspection on or before January 23, 2002 and will be subject to his review for determination of the applicability of the crime/fraud exception.

SO ORDERED.

Dated: _____

1/9/02


Nancy G. Edmunds
U.S. District Judge

CERTIFICATE OF SERVICE

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Deputy Court Clerk

Date